

## II. ISSUES RELATING TO ALLEGED PRIOR ART

### a. CLAIMS -- 35 U.S.C. § 103

Claims 1-2, 4-7, 9-10, 12-15, 17-18, 20-25 and 27-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Harper (US 7,058,016 B1) in view of Trayford et al. (US 2004/0038671 A1). (Office Action, page 3) The rejection is respectfully traversed.

The Office Action fails to present a prima facie case of unpatentability under 35 U.S.C. §103(a) because Harper is not citable in this application under 35 U.S.C. §103(c)(1) and must be removed as a reference.

Under 35 U.S.C. §103(c)(1), as amended by the CREATE Act of 2004, which also extended the applicability of 35 U.S.C. §103(c)(1) which also extended the applicability of 35 U.S.C. §103(c)(1) to all applications pending on its effective date of December 10, 2004, a reference is not citable against an application under 35 U.S.C. §103(a) if the invention described in the application for patent and the invention described in the prior art reference applied against the application were commonly owned by, or subject to an obligation of assignment to, the same person, at the time the invention in the application for patent was made. See USPTO "Frequently Asked Questions" about 103(c), <http://www.uspto.gov/web/offices/dcom/olia/aipa/103cfaq.htm>.

The present application is assigned to Cisco Technology, Inc., a wholly owned subsidiary of Cisco Systems, Inc., San Jose, California, as stated in the assignment recorded in the USPTO at reel 014614, frame 0450. The assignee on the face page of Harper is also Cisco Technology Inc. (Reel/frame 011455/0481). Further, at the time that the invention presented in the present application was made, all inventors were under an obligation to assign any later patent application to Cisco Technology, Inc., so that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

Therefore, all requirements of 35 U.S.C. §103(c)(1) are satisfied in the present case with respect to Harper, and Harper is ineligible as a reference.

Applicants respectfully request reconsideration and removal of Harper as a reference. All rejections of all claims are based upon a combination of Harper and Trayford. When Harper is removed as a reference, the Action fails to state a prima facie case of unpatentability. The consideration of all claims is respectfully requested.

### III. CONCLUSION

For the reasons set forth above, all pending claims are in condition for allowance. A petition for extension of time is hereby made to the extent necessary to make this reply timely filed. If any applicable fee is missing or insufficient, the Commissioner is hereby authorized to charge any applicable fees to our Deposit Account No. 50-1302.

Respectfully submitted,

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